

REMARKS

The Office has withdrawn the allowability of claims 7-8 based on U.S. Patent No. 5,299,999 to Brine. The Applicant respectfully disagrees and traverses this rejection. Applicant's argument in support of his disagreement will be set forth below.

The Office rejects claims 1-2, 5, and 9-11 and 13 under 35 U.S.C. §102(a) as being anticipated by U.S. Patent No. 6,368,257 to Kaplan et al. The Applicant respectfully disagrees and traverses this rejection.

The Kaplan apparatus is directed to an isotonic exercise assembly 10. The exercise assembly is coupled to a mounting assembly 12 (Figures 4 and 5). The mounting assembly 12 "includes a harness defined by a plurality of straps 14 and 16" adjustably attached to a front support plate 18 (col. 5, lines 56-61) and a back support plate 26 (col. 6, lines 5-6). A base 30 couples the front plate 18 of the mounting assembly to the exercise assembly 10. The base 30 is fixedly secured to the front support plate 18 or alternatively is removably attached in supporting relation on the front support plate 18. Col. 6, lines 23-29.

The configuration of Kaplan fails to meet the limitations of claim 1 as amended. In particular, the Kaplan apparatus fails to meet "a frame having an interior portion", wherein during use a user "is positioned within the interior portion of the frame". In Kaplan, the exercise assembly is positioned to the front support plate 18 and thus completely rests in front of the user during use, and thus, a user "is not positioned within the interior portion of the frame during use".

As the Kaplan apparatus fails to meet all of the limitations of claim 1, it fails to anticipate claim 1. As claims 2, 5, 9-11 and 13 depend directly or indirectly from claim 1, these claims are not anticipated.

The Office rejects claims 1-5, 7-8, 11 and 15-19 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,299,999 to Brine. The Applicant respectfully disagrees and traverses this rejection.

The Brine reference is directed to a weight pack for exercising having a rigid insert constituting the main support member for the backpack. The insert includes a body section corresponding to the back of the wearer and a weight shelf extension from the body section to hold removable weights. The weight shelf 152 is attached to the bottom edge of the back 150 "by a plastic glue and three fasteners". Col. 9, lines 67-end.

The Applicant contends that the Brine apparatus fails to teach all of the limitations of claim 1. In particular, claim 1 requires “a frame having an interior portion”, wherein during use a user “is positioned within the interior portion of the frame”. The Brine reference teaches a weight pack that rests on the back of the wearer, and although it is arguable that the frame of the Brine device has an interior portion, the user is not “positioned within the interior portion of the frame” during use. As such, Brine fails to meet this limitation of claim 1. As the Brine reference fails to teach all of the limitations of claim 1, it does not anticipate claim 1. Claims 2-5, 7-8 and 11 depend directly or indirectly from claim 1. As claim 1 is not anticipated by the Brine reference, the dependent claims are not anticipated.

The Office states that the frame in the Brine reference comprises cross segments “that are releasably coupled to the frame (fig. 4, 152).” The Applicant respectfully disagrees and contends that this is an incorrect reading of the reference. Figure 4 is an exploded view of the weight pack. See col. 3, lines 30-31. There is no suggestion or teaching that the weight shelf 152 is, or can be, releasably coupled to the frame. As stated above, the weight shelf 152 is attached to the bottom edge of the back 150 “by a plastic glue and three fasteners”. Col. 9, lines 67-end. Attachment by a plastic glue does not suggest a releasable mechanism, rather it suggests one that is permanently attached. Indeed, as this is a “weight pack” it would not be logical to make it releasably coupled to the frame as it is required to hold weights. In this regard, Applicant contends that claims 3, 7 and 8, as originally presented, are allowable.

With reference to original claim 5, the Office contends that the Brine reference teaches a frame comprising “an arc member 18 and a linear member 112”. The Applicant respectfully disagrees. The linear member 112 is a part of an outside cover or bag (see Figure 3). Thus, the linear member 112 does not couple to the arc member, but rather covers the arc member which is part of the insert placed inside the bag. Even assuming that “covering” constitutes a coupling, the limitations of claim 5 are not met. Specifically, claim 5 requires that the “the linear member couples to the arc member to form a semi-oval shape”. The arc member 18 (curved portion) does not form a semi-oval shape upon coupling with the linear member 112. At most it may form a rectangle with a bulge at one end. Further, review of Figure 4A reveals that the arc member couples to the back 150 *not* the linear member 112. Figure 4A is a perspective view of the embodiment illustrated in Figure 4. See col. 3, lines 32-33.

Finally, the Office rejects claim 6 under 35 U.S.C. §103(a) as being unpatentable over Brine as applied to claim 5 above. The Applicant respectfully disagrees and traverses this rejection.

The Office states that Brine “discloses the support members coupled near the arc member and near the linear members in Figure 4A”. The Office states it would have been obvious to modify Brine to directly “attach the support members to the linear and arc members”.

As set forth in Claim 6, the supporting members comprise “a first end and a second end, the first end being coupled to the arc member and the second end being coupled to the linear member”. The supporting members of the Brine reference do not meet this limitation. Indeed, one end of the supporting member is not coupled to anything, but rather, is configured to rest on the user’s shoulder. Further, the claim requires coupling *to* the arc member by a first end, and coupling *to* the linear member by a second end. The claim does not state that the coupling is “near”, nor does a modification of Brine to meet the claim language appear to result in an operable device. Indeed, it is unclear on the manner in which one end of the supporting member could be coupled to the arc member 18, which is disposed in front of the pack, and coupling the other end of the support member to the linear member 112. To accomplish this task, the supporting members would require bending which would defeat their ability to rest on the user’s shoulder and thus, render the device inoperable for its intended task. As the Brine reference fails to meet the limitation of claim 6 as originally set forth, and as claim 6 depends from claim 1, claim 6 is allowable.

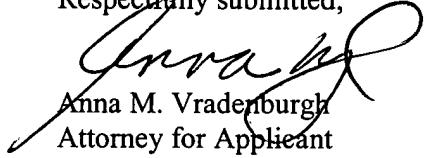
Claims 15-19 have been canceled without prejudice. As such, the rejection is now moot.

The Examiner has stated that claims 12 and 14 are allowable subject matter. The Applicant thanks the Examiner.

New claim 20 is directed to an exercise apparatus having a frame, wherein the supporting members are coupled nearer a central portion of a first member and second member of the frame. The language in claim 20 is fully supported by the original description and figures. Claims 21 and 22 depend from claim 20. New claim 23 is directed to an exercise apparatus having supporting members coupled to an arc member and a linear member. Claim 23 is a combination of original claims 1, 5 and 6. For the reasons set forth above, the Applicant contends that these claims are allowable. No new matter has been added.

The Applicant believes that the claims are in condition for allowance, and respectfully requests that the Office pass these claims to allowance.

Respectfully submitted,



Anna M. Vradenburg
Attorney for Applicant
Reg. No. 39,868

Dated: August 1, 2005

AMV/em

KOPPEL, JACOBS, PATRICK & HEYBL
555 St. Charles Drive, Suite 107
Thousand Oaks, California 91360
Telephone: (805)373-0060
Facsimile: (805)373-0051